IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.9.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

W.A.Nos.1478 of 2001 & 1471 of 2004

The Managing Director
Tamil Nadu State Transport Corporation
(Madurai Division III) Limited
Nagercoil, Kanyakumari District. .. Appellant/2nd Respondent in both W.As.

Vs

1.R.Radhakrishnan Nair
2.T.Velayudhan Pillai
3.S.Sebapathy
4.J.Abraham
5.M.Bovas
6.E.Dayal Dhas
7.A.Aiyamperumal
8.S.Eshak
9.c.Sreedharan
10.A.Thapasimony
11.V.Krishnadhas
12.D.John George
13.E.Gunaselan .. RR 1 to 13 in W.A.No.1478/01

D.Rajappan .. R1 in W.A.No. 1471/04

The Government of Tamil Nadu
rep. by its Secretary
Transport Department
Fort St.George, Chennai-9.

The Principal/Dy.Manager (Training)
Heavy Vehicle Driver Training School
Ranithottam, Nagercoil
Kanyakumari District. .. RR 14 & 15 in W.A.No.1478/01 & RR 2 & 3 in W.A.No.1471/04

Appeal under Clause 15 of the Letters Patent against the orders of the learned Single Judges dated 2.11.1998 and 14.1.2003 made in W.P.Nos.11161 of 1997 and 11655 of 2000 respectively.

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WP No.11161 of 1997: Writ Petition filed under Article 226 constitution of India to issue a writ of Certiorarified Mandamus calling for the records relating to the order of the 2nd respondent passed in office order No.8068/A-10/TNSTC/MDU Div.III/95, dated 15.7.97 and quash the same and direct the respondents 1 and 2 to regularise the petitioners Services as Driving Instructor attached to 3rd Respondents Driving School as it has been given to Pandiyan Roadways Corporation Driving Instructors.and

WP 11655/2000: Writ Petition filed under Article 226 constitution of India to issue a writ of Mandamus directing the respondent to forthwith post the petitioner as driving instructor and regularise the petitioner service as Driving Instructor respectively.

For Appellant in W.A.No.1478/01 : Mrs.Kala Ramesh

For Appellant in W.A.No.1471/04 : Mr.V.R.Kamalanathan

For RR 1 to 13 in W.A.No.1478/01 & R1 in W.A.No 1471/04 : Mr.R.Gandhi, S.C. For Mr.K.Ravichandrababu & Mr.M.T.Arunan

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J U D G M E N T

P.D.DINAKARAN,J.

I - Issue

Whether the order of re-transfer of the Drivers/ contesting respondents herein working in the Institute of Road Transport, Driving Training School of the appellant Corporation to the original post of Drivers in the respective parent branches of the appellant Corporation amounts to reversion, even though the Drivers/contesting respondents were initially transferred on the existing service conditions and without any change in the grade, increment of pay etc.?

II - Prayer

2. W.A.No.1478 of 2001 has been filed to set aside the order of the learned single Judge delivered on 2.11.1998 in W.P.No.11161 of

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1997 and W.A.No.1471 of 2004 has been filed to set aside the order of the learned single Judge dated 14.1.2003 made in W.P.No.11655 of 2000, following the order dated 2.11.1998 made in W.P.No.11161 of 1997.

III – Undisputed facts of the case

3.1. The admitted facts which led to the filing of these writ appeals are that the petitioners/contesting respondents herein were originally working as Heavy Vehicle Drivers in the appellant Transport Corporation. Thereafter, on their willingness, they were transferred to the Institute of Road transport, Driving Training School to train the Driver Trainees. Concededly, they were transferred on the existing service conditions and without any change in the grade, increment of pay etc. and nowhere in the proceedings of transfer, it was mentioned that they were promoted to the post of Driving Instructors in the Driving Training School with the time scale of pay of Rs.1980-30-2190-40-2950. No separate orders were issued to any of the petitioners stating that they were appointed as Driving Instructor or promoted as Driving Instructors. Even though it is not mentioned in all the transfer orders issued to the petitioners/contesting respondents herein that they are transferred on the existing service conditions, without any change in the grade, increment of pay etc., it is not in dispute that in spite of the transfer of the petitioners/ contesting respondents herein to the Institute of Road Transport, Driving Training School, their scale of pay continued to remain as that of the Drivers in the appellant Corporation and at no time, they made any claim for a higher time scale of pay payable to the Driving Instructors, and the petitioners/contesting respondents herein were receiving the time scale of pay of Drivers only without any protest.

3.2. It is, under such circumstances, the appellant Corporation, by proceedings dated 15.7.1997, which is impugned in W.P.No.11161 of 1997, re-transferred and posted the petitioners/contesting respondents herein, who were transferred to the Driver Training School, to the parent branches. Hence, W.P.No.11161 of 1997 was filed seeking a writ of Certiorarified Mandamus to quash the said order and to regularise their services as Driving Instructors.

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3.3. Before passing of the order in the said writ petition, the petitioner in W.P.No.11655 of 2000 (first respondent in W.A.No.1471 of 2004) filed the said writ petition seeking a writ of Mandamus directing the respondents therein to forthwith post him as Driving Instructor and regularise his service as Driving Instructor.

3.4. According to the petitioners/contesting respondents herein, the impugned proceedings re-transferring them to the parent

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branches amounts to a reversion, as they had been let to believe that they were transferred and posted as Driving Instructors to train the Driver trainees and accordingly, they are entitled to be regularised as Driving Instructors in a higher scale of pay.

3.5. The appellant Corporation resisted their claim on the ground that they were never appointed as Driving Instructors, but, only transferred to Driver Training School to train the Driver Trainees, on the existing service conditions and without any change in the grade, increment of pay etc.

3.6. The learned single Judge, overlooking the objection of the appellant Corporation and accepting the submission of the petitioners/contesting respondents herein, allowed W.P.No.11161 of 1997. Following the said order, W.P.No.11655 of 2000 was allowed granting the relief as prayed for.

3.7. Exasperated by the orders of the learned Single Judges dated 2.11.1998 and 14.1.2003 made in W.P.Nos.11161 of 1997 and 11655 of 2000 respectively, the appellant Corporation preferred the above appeals.

4.1. The learned counsel for the appellant Corporation contend that the petitioners/contesting respondents herein, who were transferred on the existing service conditions and without any change in the grade, increment of pay etc., are not entitled to object to the order of re-transfer to the respective parent branches; nor to claim that they are entitled to be regularised as Driving Instructors, particularly in the absence of any order of appointment or promotion as Driving Instructors; and if the petitioners/ contesting respondents herein are considered for the post of Driving Instructors, such valuable right to the promotional post would be denied to the similarly placed Drivers, who are seniors to the petitioners/contesting respondents herein, offending Article 14 of the Constitution of India. The denial of such promotional right to the seniors would also be against the settlement made under Section 12(3) of the Industrial Disputes Act on 7.4.1997, which provides that promotions to posts in the Supervisory Groups will be based on seniority, merit, ability and regularity in attendance and with reference to vacancies.

4.2. The learned counsel for the appellant Corporation also contend that the claim of the petitioners/contesting respondents herein that they have a legitimate right to claim regularisation to the post of Driving Instructor cannot be accepted because even at the time of transfer, it was specifically mentioned that the transfer was made on the existing service conditions and without any change in the grade, increment of pay etc., and moreover, if the claim of the petitioners/contesting respondents herein for promotion

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is accepted, the right of other similarly placed and senior drivers, who are all governed by the terms of the settlement dated 7.4.1997 entered into under Section 12(3) of the Industrial Disputes Act, would be infringed. It was also brought to our notice that even though it is not mentioned in all the transfer orders issued to the petitioners/ contesting respondents herein that they are transferred on the existing service conditions, without any change in the grade, increment of pay etc., it is not in dispute that in spite of the transfer of the petitioners/contesting respondents herein to the Institute of Road Transport, Driving Training School, their scale of pay continued to remain as that of the Drivers in the appellant Corporation and they were receiving the same without any protest, and at no time, they made any claim for a higher time scale of pay payable to the Driving Instructors.

5. Per contra, Mr.R.Gandhi, learned senior counsel appearing for the petitioners/contesting respondents herein reiterated the submissions made on behalf of the petitioners/contesting respondents herein before the learned Single Judges that weighed them in allowing the writ petitions.

6. We have given careful consideration to the submissions of both sides.

7. The cardinal issue that arises for consideration, as referred supra, is whether the order of re-transfer of the Drivers/contesting respondents herein working in the Institute of Road Transport, Driving Training School of the appellant Corporation to the original post of Drivers in the respective parent branches of the appellant Corporation amounts to reversion, even though the Drivers/contesting respondents were initially transferred on the existing service conditions and without any change in the grade, increment of pay etc.?

8. "Promotion" means an advancement in rank, grade or both. It is always a step towards advancement to a higher position, grade or honour. It is a change from a position in one classification to a position in another classification that is assigned to a higher pay range. In other words, it is a movement of a permanent employee from one position or job in the employer's organization to another position or job that has a higher salary or a higher salary range than the salary or salary range of the position or job previously held by the employee.

9. In the instant case, admittedly, the petitioners/ contesting respondents had been transferred to give training at the Institute of Road Transport, Driving Training School to the Driver Trainees

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only on the existing service conditions and without any change in the grade, increment of pay etc. and they were not given promotion as Driving Instructor. Moreover, they had been transferred only based on their willingness. Therefore, in the absence of any material to show that they have been promoted to the post of Driving Instructors, their claim that they have been promoted as Driving Instructors and their consequential claim of regularisation cannot be sustained.

10. It is not in dispute that the petitioners/ contesting respondents herein are receiving the same scale of pay as that of the drivers without any protest for all these years. Therefore, it is obvious that they had acted and were treated only as Drivers on par with other senior members.

11. From the facts and circumstances, referred to above, it can further be inferred that if there would have been some increase in emoluments on being transferred to the Institute of Road Transport, Driving Training School to train the Driver Trainees, definitely many other similarly placed Drivers would have also opted, but the petitioners/contesting respondents herein having accepted the terms of transfer on their willingness agreeing to receive the time scale of pay of Drivers and worked for all these years receiving the time scale of pay of that of the Drivers, but not that of the Driving Instructors at any point of time, now cannot claim that they have been promoted as Driving Instructors and therefore, their services should be regularised.

12. The argument of the petitioners/contesting respondents herein that the order of re-transfer, retransferring them to their respective parent branches, amounts to reversion is unacceptable, as an order of reversion is in its immediate effect bound always to be a reduction in rank. If the officer is promoted substantively to a higher post or rank, he gets a right to the particular post or rank and he is afterwards reverted to the lower post or rank, which he held before, it is a "reduction in rank". The real test in all such cases is to ascertain if the officer concerned has a right to the post from which he is reverted. If he has a right to the post then a reversion is a punishment. If, on the other hand, the officer concerned has no right to the post, he can be reverted, of course without attracting the provisions of Article 311 of the Constitution of India [vide State of U.P. v. Sughar Singh [(1974) 1 SCC 218].

13. Applying the test, referred to above, to the facts of the case, it can, in clear terms, be stated that the petitioners/contesting respondents herein were only transferred to the Institute of Road Transport, Driving Training School of the appellant Corporation to train the Driver Trainees and in the order of transfer itself it has been clearly stated that they were

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transferred on the existing service conditions and without any change in the grade, increment of pay etc. Even though in some transfer orders, the clause that they are transferred on the existing service conditions and without any change in the grade, increment of pay etc. is not stated, as rightly pointed out by the learned counsel for the appellant, it is not in dispute that in spite of the transfer of the petitioners/ contesting respondents herein to the Institute of Road Transport, Driving Training School, their scale of pay continued to remain as that of the Drivers in the appellant Corporation and they were receiving the same without any protest, and at no time, they made any claim for a higher time scale of pay payable to the Driving Instructors. If that be so, in our considered opinion, the petitioners/ contesting respondents herein have no right to claim that they should be regularised in the post of Driving Instructors, as at no point of time they have been promoted substantively to the said higher post of Driving Instructors. Consequently, the said order of re-transfer, re-transferring the petitioners/ contesting respondents herein to their respective parent branches cannot be termed as a punishment amounting to reversion.

14. Furthermore, if the claim of petitioners/ contesting respondents herein that they are promoted and their services have to be regularised is accepted, the legitimate right of the other senior drivers to the promotional post of Driving Instructors would be affected, which is not justifiable, as all the petitioners/ contesting respondents are parties to the settlement dated 7.4.1997 entered into under Section 12(3) of the Industrial Disputes Act, and as per the terms of the settlement only the senior most drivers were to be considered and posted as Driving Instructors and any other appointment would be against the terms of the said settlement. It is trite that justice demands that a person should not be allowed to derive any undue advantage over other employees. The concept of justice is that one should get what is due to him or her in law. The concept of justice cannot be stretched so as to cause heart-burning to more meritorious candidates, vide *State of Karnataka v. C.Lalitha [(2006) 2 SCC 747]*.

15. In the case on hand, the petitioners/contesting respondents herein have been only transferred and not promoted, so their re-transfer, in our considered opinion, would not amount to reversion, warranting interference by this Court. The issue raised for consideration is answered in negative.

In the facts and circumstances aforementioned, we are of the considered opinion that the petitioners/contesting respondents are not entitled to promotion or regularisation of service. The appeals deserve to be allowed and are accordingly allowed. The orders of the learned Single Judge dated 2.11.1998 made in W.P.No.11161 of

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1997 and dated 14.1.2003 made in W.P.No.11655 of 2000 are set aside. No costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1.The Managing Director
Tamil Nadu State Transport Corporation
(Madurai Division III) Limited
Nagercoil, Kanyakumari District.

2.The Government of Tamil Nadu
rep. by its Secretary
Transport Department
Fort St.George, Chennai-9.

+1cc to Mrs.Kala Ramesh, Advocate Sr 57478
+1cc to Mr.K.Ravichandrabaabu, Advocate Sr 57471
+1cc to M/s. V.K.Kamalanthan, Advocate Sr 58136
+1cc to Mr.M.T.Arunan, Advocate Sr 57456

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